

1 We have one witness left?

2 MR. CARROLL: One witness left,
3 Your Honor.

4 JUDGE SIPPEL: We're going to
5 finish him, right?

6 MR. CARROLL: Yes. Our direct is
7 going to be brief, very short.

8 JUDGE SIPPEL: Okay. Can we just
9 keep going?

10 MR. CARROLL: Fine with us. Happy
11 to do that.

12 JUDGE SIPPEL: This isn't food
13 time or anything? Wait a minute, sir. Wait
14 a minute. Bring the witness in.

15 MR. CARROLL: Your Honor, can he
16 just use the men's room before he takes the
17 stand?

18 JUDGE SIPPEL: Sure. I think that
19 would be in all of our interest. I'm just
20 going to sit here, though. I'm not going to
21 wander.

22 (Whereupon, the proceedings in the

1 foregoing matter went off the record at 3:49
2 p.m. and went back on the record at 3:52 p.m.)

3 JUDGE SIPPEL: Mr. Moss, you're up.
4 again?

5 MR. MOSS: I am, Your Honor.

6 JUDGE SIPPEL: You're pitching a
7 doubleheader today.

8 MR. MOSS: Last one today.

9 JUDGE SIPPEL: Just let me know
10 when you're ready and the witness is ready.

11 MR. MOSS: Sir, are you ready?

12 THE WITNESS: I'm ready.

13 JUDGE SIPPEL: Sir, would you
14 stand and raise your right hand while I
15 administer the oath?

16 WHEREUPON,

17 MARC GOLDSTEIN
18 was called as a witness by Counsel for Comcast
19 Cable Communications, LLC, and, having been
20 first duly sworn, was examined and testified
21 as follows:

22 JUDGE SIPPEL: Thank you, sir.

1 Please be seated.

2 Mr. Moss, your witness.

3 MR. MOSS: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. MOSS:

6 Q Can you please state your full
7 name for the record, sir?

8 A Marc Goldstein.

9 Q And, Mr. Goldstein, what is your
10 role in this litigation?

11 A I have been asked by Comcast to
12 give some testimony regarding advertising and
13 the way advertisers think and react on the
14 subject matter at hand.

15 Q Is that expert testimony?

16 A Yes, it is.

17 Q And did you in fact prepare
18 testimony on this matter?

19 A I did.

20 MR. MOSS: Your Honor, may I
21 approach?

22 JUDGE SIPPEL: Please.

1 MR. MOSS: This is Comcast
2 Exhibit 79, Your Honor.

3 (Whereupon, the above-referred to
4 document was marked as Comcast
5 Exhibit No. 79 for
6 identification.)

7 JUDGE SIPPEL: Thank you.

8 MR. MOSS: Thank you.

9 THE WITNESS: Thank you.

10 BY MR. MOSS:

11 Q Mr. Goldstein, is this the
12 testimony that you prepared on this matter?

13 A Yes, it is.

14 Q And if you flip to the last page,
15 is that your signature?

16 A Yes, it is.

17 MR. MOSS: Your Honor, we seek to
18 admit Comcast Exhibit 79 into evidence.

19 JUDGE SIPPEL: Any --

20 MR. PHILLIPS: No objection, Your
21 Honor.

22 JUDGE SIPPEL: It's in. 79 is in

1 as Comcast Number 79.

2 (Whereupon, the above-referred to
3 document, previously marked as
4 Comcast Exhibit No. 79 for
5 identification, was admitted into
6 evidence.)

7 BY MR. MOSS:

8 Q Mr. Goldstein, sir, what industry
9 are you in?

10 A I'm in the advertising industry.

11 Q And how long have you been in the
12 advertising industry?

13 A About 36 years.

14 Q Can you please briefly provide us
15 with an overview of your background in the
16 industry?

17 A My most recent experience was as
18 the President and Chief Executive Officer of
19 GroupM. GroupM is the umbrella company of
20 four major media companies -- Mindshare,
21 Mediaedge, Maxim, and Mediacom. And we all
22 fall under the overall corporate umbrella of

1 the WPP Group, which is the largest
2 advertising, media, and research company in
3 the world.

4 At GroupM, I was responsible for
5 the functioning of each of these clients --
6 or, rather, each of these independent
7 agencies. Each has their own set of clients,
8 and each does work independently of one
9 another for the most part.

10 Q And prior to your role as CEO of
11 GroupM?

12 A Prior to that I was the CEO of one
13 of those independent agencies, Mindshare. I
14 was CEO for about six or seven years. During
15 that time, I also did some double duty as
16 being the President of the National Broadcast
17 Group.

18 The National Broadcast Group at
19 Mindshare, and at all of the agencies, is
20 charged with spending our clients' money in
21 national television, national television being
22 defined as network television, the ABCs, CBSs,

1 NBCs of the world, the cable companies, as
2 well as syndicated programming -- those
3 programs that are nationally syndicated like
4 Entertainment Tonight, the Oprah Winfrey Show,
5 Jeopardy, etcetera.

6 And we purchase all of the 30-
7 second commercial announcements, 15, 60s,
8 whatever the clients want, on behalf of that.
9 So for about three years I did double duty
10 running National Broadcast, and then later
11 exclusively CEO and President, and I gave the
12 day-to-day leadership of the National
13 Broadcast Group to my two colleagues who
14 shared the co-Presidency.

15 Q And prior to your role in
16 Mindshare, where were you?

17 A Prior to Mindshare, I was at -- I
18 had helped form and create in 1993 an
19 independent, or, rather, an organization under
20 the Interpublic Group, another major media
21 conglomerate, that was called General Motors
22 Media Works.

1 General Motors Media Works was a
2 dedicated unit within the IPG family that was
3 focused solely on buying national media for
4 all General Motors brands, whether it was a
5 car division, whether it was GMAC, whether it
6 was DirecTV, which we owned and launched in
7 those days, and we bought all -- as I said,
8 all network television, all cable television,
9 all syndication television, as a dedicated
10 entity working only on General Motors.

11 Q And can you just briefly run
12 through for us prior to the time at which you
13 were at General Motors, where else you have
14 been in the industry?

15 A Well, I was -- for the four years
16 prior to General Motors Media Works, I was at
17 Lintas, which is one of the agencies, again,
18 under the IPG Group. I joined Lintas in part
19 to work on the GM business. In those days,
20 Lintas -- GM divided the national broadcast
21 responsibility. We were responsible for cable
22 and for all sports buying, as well as other

1 companies within the Lintas family -- IBM,
2 Maybelline, etcetera.

3 And then, later on we won the
4 consolidated GM business in 1993, which gave
5 us prime time news, late night, etcetera.
6 Prior to Lintas, I ran the National Broadcast
7 Group at Ogilvy & Mather, and prior to that I
8 spent nine and a half years getting my feet
9 wet, so to speak, in national broadcast at
10 Benton & Bowles Advertising.

11 Q And you mentioned purchasing
12 advertising, on which sports programs have you
13 purchased advertising for your clients through
14 the years?

15 A I think pretty much every sport.
16 I've bought time on the NFL, college football,
17 college basketball, golf, NBA, NHL, Major
18 League Baseball, tennis grand slams, NASCAR,
19 Olympics. I think I have covered most of the
20 sports, and there are probably a few other
21 sports like the Tour de France that I bought
22 as well.

1 Q Any sense as to how much money on
2 behalf of your clients you have committed in
3 advertising through your career?

4 A Well, it's a lot. It is literally
5 billions. In the time that we were working
6 solely on behalf of General Motors, we were
7 spending in excess of a billion dollars a
8 year. So when you accumulate monies over the
9 36-year period, it is tens of billions of
10 dollars.

11 Q Now, Mr. Goldstein, I'd like to
12 briefly run through a few of your opinions in
13 your direct testimony. First, have you
14 reviewed the opinion put forth by Tennis
15 Channel's expert, Dr. Singer, his conclusion
16 that advertisers view sports networks as a
17 class?

18 A Yes, I have.

19 Q And have you reached a conclusion
20 about that opinion?

21 A Yes. In fact, I think it's overly
22 simplistic and doesn't give any credence to

1 the complexity or the way we actually look at
2 this subject. We look at sports on a seasonal
3 basis. We look at sports from the audience
4 that it delivers. We look at it from the age
5 of that audience. We look at it from a male
6 versus female skew basis. We look at the
7 average audience, because different sports
8 deliver different average median age of their
9 viewership.

10 We look at what the brand or the
11 client is looking for. It's no good if I
12 really want to be in the NBA finals in June if
13 I'm a colds/flu brand, for example,
14 advertising in November/December. So you have
15 to marry all of the different factors that we
16 are looking at for the sport itself with the
17 goals and objectives of what the brand or the
18 client is trying to achieve, and then make a
19 decision on which one fits best or how many
20 fit best.

21 Q But isn't it true, sir, that
22 advertisers have sports budgets, and that

1 sports networks are all competing for the same
2 budget.

3 A Not necessarily, not at all.
4 Advertisers look at these things on multiple
5 levels. There is no absolute one way.
6 Advertisers look at sports as a proxy to
7 deliver men. We want to deliver men. In so
8 doing, we have some clients who look at, how
9 do I best deliver men?

10 Sports is going to be one of the
11 possibilities, along with cable channels that
12 tend to overdeliver men or deliver more men
13 than other cable channels, something like the
14 Discovery Network, something like National
15 Geographic, something -- History Channel. All
16 are cable networks that deliver more men, so
17 some advertisers will look at men. Some
18 advertisers will in fact have a sports line.

19 When I was at General Motors, we
20 didn't have a sports line. We had a specific
21 sports budget. So we had a budget
22 specifically for the NFL, a budget

1 specifically for college football, a budget
2 specifically for the NBA, and on and on. They
3 were sport-specific. There was no, if you
4 will, general sports budget.

5 Q Mr. Goldstein, you have also
6 opined on how advertisers view tennis and
7 golf.

8 A I looked at that, and I looked at
9 it primarily from two points of view. I
10 looked at popularity, if you will, and I
11 looked at popularity from a viewer point of
12 view and from an advertiser point of view.

13 Q I guess my first question is: how
14 do advertisers view tennis and golf?

15 A Well --

16 Q Do they view them as similar?

17 A -- generally speaking, we look at
18 tennis and golf as very different. From a
19 viewership point of view, tennis is a --
20 delivers more viewers. It's a higher rated
21 sport on an overall basis. It is a network
22 televised sport for roughly 30-some-odd weeks

1 of the year, every Saturday and Sunday, on
2 CBS, NBC, and sometimes ABC, from mid-January
3 until the end of September at the FedEx
4 tournaments.

5 Q Mr. Goldstein, I think you said
6 tennis and I --

7 A I'm sorry. I meant golf. I
8 apologize.

9 (Laughter.)

10 Slip of the tongue. Golf is on
11 network television every single weekend,
12 Saturday and Sunday, roughly middle of January
13 through the end of September or early October,
14 and from a viewership point of view is a very
15 highly rated sport.

16 I mean, if you look at the most
17 recent golf major, the Masters, it delivered
18 a 9-1/2 rating. It was down a little bit from
19 the 10-plus of a year ago, but it will
20 probably be one of the highest-rated sports
21 that we have in 2011, just as it was in 2010.

22 And I took a look at the golf

1 performance this year. I looked at --
2 frankly, I looked at many of them. I looked
3 at the Phoenix Open. It was a sport that does
4 not have a title sponsor. As you know, most
5 -- many golf events have advertisers as title
6 sponsors -- the Honda Classic, for example.
7 Well, this one didn't. It didn't even have
8 Tiger Woods in it.

9 And it aired on Sunday, February
10 7th, against Superbowl pre-game coverage. It
11 aired, if you will, right in, and it did a 1.8
12 rating. Now, that's a modest rating, even in
13 golf standards, but it's about 15 percent
14 higher than the finals of Wimbledon, which
15 aired in July on NBC.

16 So when you look at it from a
17 viewer point of view, you see that golf
18 generally is delivering higher ratings than
19 tennis on a pretty consistent basis.

20 I looked at one other thing. I
21 looked at it from an advertiser point of view,
22 and I checked out how many advertisers want to

1 be associated with golf. There are 42
2 corporate partners that are listed as PGA tour
3 sponsors. That's a pretty significant number,
4 and it covers a wide range of products and
5 services.

6 I then looked at how many were
7 corporate sponsors and partners of the
8 Association of Tennis Professionals, the
9 organization that runs the ATP tour that runs
10 here in the United States. There were only
11 eight.

12 And I kind of thought to myself,
13 well, I've got 42 corporate partners on one
14 hand, eight on the other. That's got to speak
15 to the way advertisers view a willingness, a
16 desire, and an interest in being part of a
17 particular sport.

18 Q Mr. Goldstein, did you look at how
19 advertisers would view the gender composition
20 of the viewership of the respective sports?

21 A Yes, I did. As I mentioned
22 earlier, we tend to look at sports as a proxy

1 for delivering men. Now, there's lots of
2 different ways to deliver men, and, frankly,
3 you might say, "Well, why do you have any
4 interest in delivering men apart from women?"

5 And when you look at the
6 television landscape, if you will, we kind of
7 segment everything by day parts. So we have
8 -- if you start the day at 7:00 in the
9 morning, and 7:00 to 9:00 we call early
10 morning, and it's the Today Show and Good
11 Morning America. 10:00 usually until about
12 4:00 in the afternoon is dominated by soap
13 operas, and there are some talk shows these
14 days.

15 Early evening news tends to be a
16 day part unto itself. 6:30 to 7:00 it's Brian
17 Williams, Diane Sawyer. Prime time, 8:00 to
18 11:00, is pretty much a hodgepodge of lots of
19 different programs on ABC, CBS, Fox, the CW.
20 And then, late night television at 11:30,
21 where we've got Letterman and Leno, Nightline
22 certainly for half an hour, and some programs

1 that air after Leno and Letterman.

2 But the commonality among those
3 day parts is that they all tend to deliver
4 more women than men. Roughly 55 to 60 percent
5 of the audience in those day parts is going to
6 deliver -- are going to be women, and the
7 reciprocal of about 45 percent are going to be
8 men.

9 So what we try to do, many of our
10 clients and many of our brands, try to balance
11 that a little bit by finding ways to deliver
12 more men in their audience. So you look to --
13 as I mentioned, you look to the History
14 Channel, you look to National Geographic, and
15 you look to sports, programs that will deliver
16 significant skews towards men to help balance
17 out that overall male-female ratio and get
18 more males in front of your commercials.

19 Q Well, sir, The Tennis Channel's
20 viewership has I think approximately ■
21 percent male. Would Tennis Channel be viewed
22 in the group of networks that would help

1 advertisers deliver male audiences?

2 A Not really, not really. And the
3 reason for that is we are looking at networks
4 and programs that skew much greater. And
5 there are lots of sports, for example, and
6 even cable networks, that are 70, 75 percent,
7 and 80 percent men.

8 Now, why is that important? The
9 dilemma that we face is we are spending so
10 much money in network television, okay, that
11 if we are spending \$10 here, we are spending
12 a buck and a half against men. So it's not --

13 JUDGE SIPPEL: Sort of like the
14 advertiser.

15 THE WITNESS: The advertiser, yes.
16 Okay? And I don't mean literally \$10. I'm
17 trying to just use --

18 JUDGE SIPPEL: No, I like that --

19 THE WITNESS: -- that as an
20 example.

21 JUDGE SIPPEL: I like the
22 analogies.

1 THE WITNESS: Okay? So it's not
2 an equal amount of money against the two
3 groups. So the dollar and a half that is
4 allocated towards reaching more men has to
5 work real hard to help balance out that
6 audience skew, because we are spending so much
7 money against this other part of the pie, so
8 to speak, in prime time, etcetera, and
9 overdelivering women.

10 BY MR. MOSS:

11 Q And how do you make that left hand
12 work real hard?

13 A Well, you look at those networks,
14 those -- whatever they may be, those
15 opportunities that are going to really deliver
16 heavy numbers of sports -- of male viewers,
17 excuse me, things that are not as balanced,
18 frankly, because I've already got that. I've
19 got that with everything else, so to speak.

20 I need to overdeliver the male
21 side of the equation with things like Golf
22 Channel or some other sports channels, and,

1 not to be repetitive, things like History, Nat
2 Geo, you know, and the like.

3 Q Mr. Goldstein, did you also review
4 Dr. Singer's conclusion regarding the amount
5 of advertising overlap between Tennis Channel
6 and Golf Channel?

7 A Yes, I did.

8 Q And did you agree with his
9 conclusions?

10 A No, I didn't agree. I didn't
11 agree for a lot of reasons. In my experience,
12 when we're buying cable television, first of
13 all, we're buying 20 to 30 networks deep. We
14 don't buy one, two, or three, or we're doing
15 that on a very rare occasion.

16 We're buying a broad swath of
17 cable networks for our clients. So I would
18 expect there to be a certain amount of
19 overlap, and I found, based on some of his
20 numbers -- first of all, he took a very small,
21 and I don't think representative, sample of
22 clients to draw certain comparisons.

1 He didn't use, literally, the top
2 advertisers, because he chose to not include
3 a group that buy on Golf Channel -- the golf
4 manufacturers and golf equipment makers. I
5 don't think that's a realistic approach to an
6 apples to apples comparison.

7 He also included prospects which,
8 I mean, I think every client is probably a
9 prospect. I mean, if you're in the market,
10 and as a sales organization, and your goal and
11 objective is to increase revenue and get more
12 business, you should be knocking on every
13 door, you should be making as many
14 presentations, as many pitches to potential
15 advertisers as you can. I would think that
16 you'd be, you know, out there with the top
17 100, top 200 advertisers as often and as
18 frequently as you can get a meeting in front
19 of these people.

20 So to include prospects, I would
21 think everybody is a prospect. I don't think
22 that's a realistic way of looking at these

1 things. I would be more interested to know
2 how many prospects were actually converted to
3 sales.

4 So I don't think that that
5 analysis that he put forth accurately
6 represents the subject at all.

7 MR. MOSS: Your Honor, we have no
8 further questions at this time.

9 Thank you very much, Mr.
10 Goldstein.

11 JUDGE SIPPET: Cross-examination?

12 MR. PHILLIPS: I've got a few
13 questions.

14 CROSS-EXAMINATION

15 BY MR. PHILLIPS:

16 Q How are you doing, Mr. Goldstein?

17 A I'm fine, sir. How are you?

18 Q Just fine. We spent an afternoon
19 together in New York, as you may recall.

20 A I do.

21 Q I've got a few questions for you.
22 You've never worked on the direct selling side

1 on behalf of a network, have you?

2 A That is correct.

3 Q And you've never sort of gone out
4 and made the sales calls on -- knocked on the
5 door of prospective advertisers, have you,
6 sir?

7 A No.

8 Q And you don't regard yourself an
9 expert in ratings methodology either, do you,
10 sir?

11 A No, I do not.

12 Q Now, I'm just going to go back,
13 and you'll pardon me if some of these
14 questions are things we went over a couple of
15 months ago. Generally, would you agree with
16 me that clients give ad agencies and ad buyers
17 a fixed budget to work with?

18 A Clients give us a budget from
19 which we develop a media plan at the beginning
20 of a year. Usually that coincides with their
21 fiscal year.

22 Q And you would agree with --

1 A I would say that --

2 Q I'm sorry.

3 A I would say that it rarely --
4 rarely stays the same as its original number
5 or plan.

6 Q But, sir, you would agree with me
7 that for all intents and purposes ad budgets
8 are finite, would you not, sir?

9 A Ultimately, yes.

10 Q And ad buyers work within these
11 budgets to determine where the resources in
12 the media budget are going to be spent, isn't
13 that right, sir?

14 A Yes, they do.

15 Q The norm, I take it, even though
16 there can be some changes through the years,
17 the norm, I take it, is that a fixed media
18 budget is given against which you are going to
19 spend, is that right, sir?

20 A As I said, the budget fluctuates
21 for almost every advertiser throughout the
22 course of the year. So, I'm sorry, defining

1 it as being absolutely finite is very
2 difficult to agree with.

3 Q But, sir, didn't it -- you agree
4 that for all intents and purposes ad budgets
5 are finite, do you not, sir?

6 A Well, at the end of the day, you
7 spend a certain amount of money. I agree with
8 that.

9 Q Now, I also -- it is also true,
10 sir, that networks compete every single day
11 for every single dollar that they feel that
12 they can get their hands on, don't they, sir?

13 A I believe so, yes.

14 Q And, in fact, they go out there
15 and knock on every door, as I think you just
16 said a few minutes ago, don't they?

17 A I think if they are good at what
18 they do, yes, they do.

19 Q And there is one big pool of
20 marketing funds that doesn't vary all that
21 much, that fundamentally everybody is picking
22 at, sir, is that correct?